

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE CAM FERENBACH, MAGISTRATE JUDGE
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4 ORACLE USA, INC., a Colorado :
5 corporation; ORACLE AMERICA, :
6 INC., a Delaware corporation; :
7 and ORACLE INTERNATIONAL :
8 CORPORATION, a California :
9 corporation, :
10 :

11 Plaintiffs, :

12 -vs- :

13 RIMINI STREET, INC., a Nevada :
14 corporation; and SETH RAVIN, :
15 an individual, :
16 :

17 Defendants. :
18 :
19 :
20 :
21 :
22 :
23 :
24 :
25 :

No. 2:10-cv-106-LRH-VCF

October 7, 2019

Las Vegas, Nevada

TRANSCRIPT OF STATUS CONFERENCE

APPEARANCES:

FOR THE PLAINTIFFS:

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(Appearances continued on Page 2.)

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1 LAS VEGAS, NEVADA, MONDAY, OCTOBER 7, 2019, 12:56 P.M.

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4 THE CLERK: This is the time set for a status
5 conference in case 2:10-CV-106-LRH-VCF, Oracle USA versus
6 Rimini Street, Inc.

7 Counsel, please enter your appearances for the
8 record.

9 MR. POCKER: Your Honor, Richard Pocker, Boies
10 Schiller Flexner, on behalf of the Oracle parties.

11 THE COURT: Thank you, Mr. Pocker.

12 MR. MAROULIS: Good afternoon, your Honor.
13 James Maroulis from Oracle for the Oracle parties.

14 THE COURT: Mr. Maroulis, thank you.

15 MS. HARTNETT: Kathleen Hartnett from Boies
16 Schiller Flexner also for Oracle.

17 THE COURT: Thank you, Ms. Hartnett.

18 MR. POLITO: John Polito from Morgan, Lewis &
19 Bockius for Oracle.

20 THE COURT: Mr. Polito.

21 MS. SHINN: Lindsey Shinn from Morgan Lewis for
22 Oracle.

23 THE COURT: Thank you, Ms. Shinn.

24 MR. VANDEVELDE: Good afternoon, your Honor.
25 Eric Vandeveld from Gibson Dunn on behalf of Rimini Street.

1 THE COURT: Mr. Vandavelde.

2 MR. WHITTAKER: Stephen Whittaker on behalf of
3 Rimini Street from Gibson Dunn.

4 THE COURT: Mr. Whittaker.

5 MR. ALLEN: And West Allen from Howard & Howard
6 on behalf of Rimini Street.

7 THE COURT: Mr. Allen.

8 Okay. So I've got my paperwork out here, and I saw
9 the notice submission of certificates was filed. I read
10 through it. It looked kind of like what I had contemplated in
11 the order, and I haven't received any filings by anybody
12 saying there's a problem, but I'm glad you all came in.

13 Is there anything I need to address here today or --
14 no? Seeing nothing -- I guess, do I need to set another
15 status conference, or do you think it's going to move along --

16 MR. POCKER: From Oracle's perspective, I agree
17 that things have worked relatively smoothly thanks to the
18 structure and protocol you set up in here.

19 If we have any concern, and it's a major one given
20 the fact that we're trying to enforce a very important
21 injunction in this case, it's the timeliness, and you've seen
22 the submissions that -- they made productions on
23 September 16th, the 23rd, the 27th, and we anticipate another
24 one today.

25 THE COURT: Right.

1 MR. POCKER: The total number -- and this is
2 where we have our concern about whether this can be done
3 promptly and needs to be a little guidance from the Court to
4 move that along, you recall in the previous hearing when we
5 were proposing 19 custodians, I think, or 20, and there was
6 discussion with the Court about what do we think the document
7 universe is going to look like, Rimini represented something
8 like, I think, on the order of 750,000 documents, somewhere
9 along there.

10 Subsequently my colleagues have had meet and confer
11 meetings with them and progress discussions, and during one
12 call they indicated with the new list of custodians that it's
13 closer to maybe half a million, 500,000, maybe upward of that
14 slightly, because there's other devices they may need to
15 search beyond what they've already got.

16 THE COURT: Okay.

17 MR. POCKER: To date, according to the reports,
18 it looks like they've gone through a 120,000 documents.

19 THE COURT: That's what it looked like to me
20 roughly, yeah. Well, not gone through, actually produced,
21 right?

22 MR. POCKER: Produced, yeah, but --

23 THE COURT: There's another production coming.

24 MR. POCKER: And that's where we're looking at
25 that, your Honor. Also --

1 MR. VANDEVELDE: Gone through, produced about
2 50.

3 MR. POCKER: They've produced 50? Yeah, 59,000
4 is what they've produced.

5 THE COURT: Fifty-nine boxes?

6 MR. POCKER: 59,000. They've gone through
7 120,000. 120,000 reflects what they've reviewed out of the
8 500,000.

9 THE COURT: Okay. Yeah, I guess we need to be
10 precise there so --

11 MR. VANDEVELDE: I can give you statistics.

12 THE COURT: Perfect. That's okay, let's get
13 this so we're all talking about the same thing.

14 MR. VANDEVELDE: As of what we expect to be by
15 the end of today, the universe is roughly 572,000 documents.
16 We will have reviewed by today roughly 144,000 documents. We
17 will have produced roughly 90,000 documents.

18 THE COURT: So let me just say, there's another,
19 like, 31 coming today, do you think, or do you agree with
20 their 59 number for the earlier part?

21 MR. VANDEVELDE: I believe, yes, that would be
22 right. I'm not sure about the 59,000, but at the end of today
23 it should be roughly 90,000.

24 THE COURT: Okay, okay.

25 MR. VANDEVELDE: And the total cost to date is

1 over a quarter million dollars.

2 THE COURT: Right. Okay. All right. So -- oh,
3 go ahead.

4 MR. VANDEVELDE: If I could just say --

5 THE COURT: Sure.

6 MR. VANDEVELDE: So if you do the math, we are
7 about exactly a quarter of the way through the document review
8 universe, that is devoting a ton of resources both in terms of
9 contract review, reviewing nonstop all day every day, as well
10 as second overview, privilege log review from attorneys both
11 at Gibson and in-house.

12 So we're about a quarter of the way through. So if
13 you extrapolate out, and you take into account the time
14 necessary for privilege logging, which we expect to be in the
15 several thousands of documents in the privilege log, we're
16 looking at roughly four more months.

17 THE COURT: You're looking at 1.25 million
18 probably, roughly.

19 MR. VANDEVELDE: At least. There are some
20 factors that may adjust the amount of work required, for
21 example, just so your Honor knows, towards the end of the
22 queue of custodians, there are some higher level executives
23 that are more involved with legal counsel.

24 There's going to be more attention to privilege
25 review and more documents that will have to be logged which

1 may make it more laborious.

2 THE COURT: Sure.

3 MR. VANDEVELDE: But if you just extrapolate
4 out, yes, roughly 1.25 million and roughly four more months.

5 THE COURT: Okay. Thank you. All right.

6 MR. POCKER: So our concern, your Honor, is more
7 with the pace of what's going on, and if you just extrapolate
8 out at this pace, maybe he's correct that it does require
9 another four months from Rimini's view, but we think they can
10 do better, and there's a metric in what they've reported
11 that's illustrative of that fact.

12 When you look at the -- well, obviously, they're
13 using document reviewers, Mr. Vandeveldel has said that. It
14 comes out to like \$126 an hour, the cost so far, with respect
15 to the effort made to generate this one quarter basically
16 of -- or one fifth of the available documentation.

17 Simply by getting more document reviewers, I think
18 they can pick up the pace over there. It's not as if -- and
19 it's pretty obvious that it's not a lot Gibson Dunn attorney
20 time in this because they charge a whole lot more than \$126 an
21 hour, and the Court is familiar with that from other case as
22 well.

23 So, in this instance, if it's a matter of getting
24 enough bodies -- and both sides have done this, by the way.
25 We've had instances on our side of the aisle where we've had

1 to hire additional document reviewers for concentrated periods
2 of time in order to make certain deadlines with respect to
3 disclosure in both the first Rimini case and the second Rimini
4 case.

5 And our concern here is that because time is of the
6 essence, it's their continuing violations, if all that's
7 necessary is throwing a few more bodies into this, it's not
8 going to increase the cost, if I understand what
9 Mr. Vandavelde has said, it's just going to concentrate this
10 into a workable time frame.

11 The -- as it was before September 5th, the Court had
12 the discovery deadline is October 8th, which would have been
13 tomorrow --

14 THE COURT: Right.

15 MR. POCKER: -- and then a date of October 21st
16 by which we had to file our motion for contempt.

17 THE COURT: Contempt, yeah.

18 MR. POCKER: As it is, what we're proposing,
19 because we think it's imminently doable --

20 THE COURT: Right.

21 MR. POCKER: -- in the framework that you've set
22 up --

23 THE COURT: Okay.

24 MR. POCKER: -- is for them to do all their
25 custodial and noncustodial production by Thanksgiving, and

1 then expert disclosures we'd propose mid December, and that
2 would set up a time frame where the motion for contempt could
3 be filed by the end of January 2020. That will give everybody
4 time to digest the expert analysis as well.

5 Another thing that we're --

6 THE COURT: Hold on before you go to another
7 thing because -- if you don't mind --

8 MR. POCKER: Sure.

9 THE COURT: -- unless it's something that's
10 really pertinent to this part, what you were going to say,
11 here's what I wanted -- I just had a question. You're already
12 into the 50-50 split range, right?

13 MR. VANDEVELDE: Not quite, your Honor.

14 MR. POCKER: We're close, your Honor.

15 THE COURT: Well, a hundred thousand
16 documents -- oh, produced. Is it a hundred thousand produced
17 or a hundred thousand reviewed?

18 MR. VANDEVELDE: Your Honor, we believe it's
19 produced at the last hearing. There was --

20 THE COURT: I see.

21 MR. VANDEVELDE: -- some debate about what your
22 Honor had intended. That's what we're going with, it's
23 produced or logged in a privilege log.

24 THE COURT: Okay. Okay. Oh, produced or
25 logged.

1 MR. VANDEVELDE: Yes.

2 THE COURT: Okay. So when's your first log
3 coming in?

4 MR. VANDEVELDE: Today.

5 THE COURT: Okay. So you should -- was the 90
6 you gave me both produced and logged, or just produced?

7 MR. VANDEVELDE: There's actually very few
8 logged documents, but we expect that to increase so roughly
9 90,000 --

10 THE COURT: So next week you're going to break
11 the hundred thousand barrier, right? So then you'll be 50-50,
12 and then, if you speed up the process, pretty soon they're
13 going to be paying a hundred percent, right?

14 MR. VANDEVELDE: Yeah. I know Mr. Pocker hasn't
15 been involved in the day-to-day meet and confers and
16 discovery.

17 There's substantial difficulty, you can't just ramp
18 up from -- I think we have 12-ish reviewers to -- this would
19 be a four fold increase to 50 -- 48 reviewers. That is just
20 not feasible to get them trained up and start on the issues
21 they need to be to review this document set.

22 It is not feasible to accelerate by a factor of four
23 the document review process with contract reviewers. I
24 will -- go ahead.

25 THE COURT: I was going to say, well, what do

1 you think might -- is it possible to speed up some from your
2 point of view?

3 MR. VANDEVELDE: We can track with the
4 third-party vendor who coordinates with the contract reviewers
5 and see if we can add additional bodies, but it is not
6 feasible to do it by a factor of four, let alone a factor of
7 two.

8 THE COURT: All right. Okay.

9 MR. VANDEVELDE: I will also just say just
10 harkening back to our prior hearing, this is the least
11 relevant information.

12 Recall that the information that will or will not
13 show whether Oracle's allegations about whether we violated
14 the injunction, that is the technical data that they are
15 collecting. We've produced source code, we've produced logs,
16 we've produced databases. The custodial information cannot
17 show whether or not we have violated the injunctions.

18 THE COURT: Well, okay. You had another point
19 to raise. I cut you off so if you want --

20 MR. POCKER: And, actually, it dovetails really
21 with what this last observation is.

22 THE COURT: Okay.

23 MR. POCKER: But in the context of our
24 discussions with the Rimini Street lawyers about the
25 production, they have said as much in e-mail that the

1 custodial production is going to impact their ability to
2 continue the noncustodial production, the very things that
3 Mr. Vandavelde says hold the key to the case in his opinion.
4 There's been a slowdown with respect to that, and that does
5 also concern us as far as getting this all done in a
6 reasonable time to make use of it. So --

7 THE COURT: Okay. That was the other point I
8 was going to make.

9 MR. POCKER: So we --

10 MR. VANDEVELDE: Your Honor, I just have to
11 correct the record. We offered Oracle the choice, what would
12 you like us to prioritize, and they chose to prioritize the
13 custodial documents. That was entirely Oracle's choice to
14 have us focus on that, and we had told them and they
15 acknowledged that there would be an impact on other sources.

16 THE COURT: So let me -- so using the same
17 reviewers for the technical documents that you're using for
18 the custodial production?

19 MR. VANDEVELDE: In some instances, yes.

20 THE COURT: But in others, no?

21 MR. VANDEVELDE: Yes. The Salesforce is a
22 database that Oracle has sought access to. We have decided --
23 the parties have agreed to do a giga export of it. It
24 requires manual review, and those are being manually reviewed.

25 THE COURT: And that would be by a different

1 type of reviewer.

2 MR. VANDEVELDE: The same reviewers, and we're
3 talking about many tens of -- I don't know the exact number,
4 but I believe it's in the hundreds of thousands of documents
5 as well.

6 THE COURT: Well, I mean, I know -- of course, I
7 don't have a lot of firsthand experience at this level, but I
8 know very early in my career we had the MGM fire litigation,
9 and we hired people to go and look through stuff, and they
10 did.

11 It's hard to hire people. And you want it to do
12 with a certain degree reliability, you know, and it's a tough
13 way to go here. I don't know how I can figure it out, to tell
14 you the truth.

15 MR. VANDEVELDE: Well, my proposal would be, I
16 think, consistent with your Honor's, which is let's get
17 through another month, the parties can meet and confer, see
18 where we are in mid or early to mid November, and then come
19 up -- hopefully the parties can -- we have not had a chance to
20 discuss what a reasonable schedule looks like.

21 By then we'll have another -- we should be close to
22 halfway through, and we can project out what a -- the
23 remainder of discovery looks like, fact discovery, what expert
24 phase looks like, and what a reasonable briefing schedule
25 looks like.

1 THE COURT: I don't know --

2 MR. POCKER: Just so the record is clear, too,
3 your Honor, Rimini's representation that they needed to
4 prioritize custodial over noncustodial, we certainly heard
5 them, we acknowledge that that's their position, but we
6 haven't accepted that position.

7 THE COURT: Well, which would you like them to
8 prioritize?

9 MR. POCKER: Well, I don't think we have to
10 prioritize either one. We move on two tracks all the time in
11 this case, and discovery is discovery.

12 And, in fact, this one is a little simpler in the
13 sense that we've got this universe of roughly 500 to 600,000
14 documents and an understanding of how many contract reviewers
15 and resources it takes.

16 The cost aspect, the Court pointed out at some point
17 it's going to be shared between us, and at some point maybe
18 all Oracle depending on how much is there.

19 So a lot of the usual things you don't know going
20 into open-ended discovery which might lead someone to think,
21 gee, we can't really decide when this is going to be over,
22 they don't exist here, and it just requires a little more
23 commitment and organization on the other side, and we can get
24 this done on the timetable that we've proposed.

25 The noncustodial production, I think last time there

1 were a few small discovery issues that we alerted the Court,
2 but nothing has percolated to the point of being an issue that
3 you need to decide or we need to brief. But there's no reason
4 they can't do both things at the same time.

5 Certainly in the underlying litigation and in the
6 Rimini 2 case, custodians were producing, depositions were
7 going on, documents were coming noncustodial, that's the
8 ordinary situation, and there's nothing less important about
9 these proceedings than about the discovery in those other
10 trials.

11 I think there's a tendency for my adversaries to see
12 this as -- as they characterized during the earlier hearings,
13 oh, this is just limited discovery, a peek behind the curtain.
14 No, no, no. This is discovery for whether or not a
15 federally-issued injunction is being complied with or not.

16 The issues are just as big as in the other two
17 underlying litigations, and, as a result, I think we're
18 justified in expecting that they'll give it the same kind of
19 full-throated attention and commitment that they would in that
20 other discovery context.

21 THE COURT: All right, Mr. Pocker.

22 MR. POCKER: I'm not asking for it tomorrow --

23 THE COURT: I understand.

24 MR. POCKER: Thank you.

25 MR. VANDEVELDE: A couple of lines.

1 Mr. Pocker is right in some respects, and those
2 issues are the exact issues that are fully briefed in summary
3 judgment in Rimini 2 which is where these issues should be
4 resolved, not in this proceeding.

5 About Rimini 2 and discovery processes, in that
6 situation, and it is not applicable here, the parties agree
7 there was technology-assisted review that made this type of
8 laborious custodial document review process easier to get
9 through large volumes. In that case I think many millions of
10 documents were produced.

11 I think in Oracle in -- back in, I think, late
12 spring, early summer, suggested TAR, technology-assisted
13 review, might be workable here. They've since acknowledged
14 that it's just not. This requires a manual process.

15 Rimini has already spent over a quarter million
16 dollars in the last month employing numerous contractors. We
17 are open to trying to add a few contractors, but to your
18 Honor's point, accuracy and reliability, there's a ramp-up
19 speed and educational component to this that makes them more
20 efficient.

21 And so we are happy to try, but it is not feasible
22 to operate on the time frames that Oracle is talking about.

23 THE COURT: All right. I understand your
24 position.

25 Last word here, Mr. Pocker.

1 MR. POCKER: You know, maybe if we were able to
2 confer with their review vendor with respect to some of these
3 details and time frames and whatever, that might lead to us
4 having some sort of a better understanding of what's
5 reasonable in this case or not. That would certainly help us
6 with respect to evaluating their representations.

7 I also would note Mr. Vandavelde talked about these
8 technical documents. Does Rimini have a projected production
9 date for sales ports in SharePoint?

10 Because we haven't heard that yet. It would be
11 nice, rather than we proposing a schedule and then saying it's
12 complicated, that we get some sort of an insight there.

13 THE COURT: Okay. So then you would want -- you
14 would have sort of an idea of where the custodial type
15 production is going if we stay at this pace, you would like to
16 have information on when the other production looks like it's
17 going to be finished.

18 MR. POCKER: Yes.

19 THE COURT: Okay. I think the way to do this
20 has to be -- you're off to a good start. I'll go with what
21 Rimini thinks.

22 We'll set another hearing in four weeks. I'll order
23 you to ramp up to the extent you can to feel safe that you've
24 got good quality, you know, and then work with Mr. Pocker
25 to -- and his side to provide them what insight -- I mean, I

1 can understand why you might object to them going in and
2 visiting with your reviewers, but, you know, there might be
3 some way to have some communication on that point to reassure
4 him.

5 You know, I mean, to me, you're just looking -- it
6 looks like everybody is operating in good faith here. You
7 would like them to go faster, they're saying we're going as
8 fast as we can. I don't know --

9 MR. POCKER: The mechanism you set up, your
10 Honor, was fabulous, we just --

11 THE COURT: Could have been a little more clear
12 on produced or review I see now, but it's hard to know when
13 you're making these things up so -- but I think we're in a
14 good place, it's just the timing is the issue.

15 Okay. So what's a good date, Tawni, about four
16 weeks? Can you look on my calendar, please?

17 THE CLERK: Tuesday, November 5th, at
18 ten o'clock.

19 THE COURT: How does that work?

20 Take a look at your calendars. If that's going to
21 cause a big problem, we can find another date.

22 MR. VANDEVELDE: That works for Rimini, your
23 Honor.

24 THE COURT: Okay, great.

25 MR. POCKER: Works for our side as well, your

1 Honor.

2 THE COURT: Okay. What time was that,
3 ten o'clock?

4 THE CLERK: That was Tuesday, November 5th, at
5 ten o'clock in courtroom 3D here.

6 THE COURT: Okay, fine. In the meantime, sort
7 of continue on, try to ramp up if you can, communicate a
8 little better, and a deadline -- projection for the other
9 noncustodial --

10 MR. VANDEVELDE: Yeah, I think we're very close
11 on the Salesforce side so I don't think that will be an issue.

12 THE COURT: All right. They'll get that to you
13 then.

14 All right. Thank you for coming in.

15 -o0o-

16
17 I certify that the foregoing is a correct
18 transcript from the record of proceedings
in the above-entitled matter.

19 /s/Margaret E. Griener 10/25/2019
20 Margaret E. Griener, CCR #3, FCRR
21 Official Reporter
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